

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOSE RAMIREZ,
Petitioner,

v.

STEVEN J. O'BRIEN,
Respondent.

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) **CIVIL ACTION NO. 03-40281-FDS**
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**PETITIONER'S MOTION TO
AMEND THE PETITION FOR WRIT OF HABEAS CORPUS**

The Petitioner hereby moves to amend the Petition for Writ of Habeas Corpus to include the following three grounds:

Ground One: The admission of hearsay violated the Petitioner's confrontation rights under the United States Constitution;

Ground Two: The introduction of the Petitioner's statement violated the privilege against self-incrimination; and,

Ground Three: Counsel's failure to expressly raise the federal nature of the Petitioner's hearsay claim in his direct appeal denied him his right to effective assistance of counsel.

In support of this motion, the Petitioner states that on December 4, 2003, he filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in state custody. That petition raised Ground One and Ground Two as listed above. The Respondent agreed that Ground Two had been exhausted, but moved to dismiss the petition on the basis that Ground One had not been exhausted. This Court ruled that Ground One had not been exhausted but denied the motion to dismiss the petition to provide the Petitioner the

opportunity to either “(1) file a motion to amend the to delete the Sixth Amendment claim or (2) seek a stay in this Court in order to seek immediate habeas review of that claim in state court.” (Memorandum and Order, dated March 24, 2005).

On April 14, 2005, the Petitioner filed a motion for new trial in the state court and the proceedings in this Court were stayed pending resolution of the state court proceedings. The motion was denied in the trial court on September 28, 2005. The defendant timely appealed that decision and on December 18, 2006, the Massachusetts Appeals Court affirmed the denial of the motion for new trial. The defendant timely sought further appellate review of that decision. On February 1, 2007, the Massachusetts Supreme Judicial Court denied the Petitioner’s application for further appellate review. Ground One and Ground Three, as listed above, were raised in the motion for new trial, on appeal, and in the request for further appellate review.

WHEREFORE, the Petitioner requests that this Court allow the Petitioner to amend the Petition for Writ of Habeas Corpus to include the three grounds as listed above.

Respectfully submitted,
JOSE RAMIREZ
By his attorney,

/s/ Alan D. Campbell
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Dated: March 2, 2007

Rule 7.1 Certification

I hereby certify that I conferred with the Respondent's counsel, Eva M. Badway, by telephone on March 2, 2007. The parties were unable to resolve or narrow the issues presented in this motion.

/s/ Alan D. Campbell

Alan D. Campbell

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 2, 2007.

/s/ Alan D. Campbell

Alan D. Campbell